

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL COSME,	§	
	§	No. 100, 2012
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 0706005314
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 11, 2012
Decided: August 17, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 17th day of August, 2012, on consideration of the briefs of the parties,
it appears to the Court that:

1) Michael Cosme appeals from the sentence he received for a violation of probation. He argues that the trial court abused its discretion by imposing a sentence outside the TIS Guidelines and the recommendation of defense counsel. We find no merit to this appeal and affirm.

2) In October 2007, Cosme pled guilty to possession of marijuana, failure to stop on a police signal, and resisting arrest. The court immediately sentenced him to 3 years, 6 months at Level V, suspended for 2 years, 6 months at Level III. In August

2011, Cosme violated probation and the court resentenced him to 4 years, 6 months at Level V, with credit for 15 days served, suspended for 1 year at the Level IV VOP Center, followed by 1 year at Level III.

3) On December 23, 2011, the court modified Cosme's sentence to allow him to serve his Level IV time at home confinement or work release. One week later, Cosme was charged with violating probation 8 times between October 2011 and December 23, 2011. At the VOP hearing, Cosme admitted all of the violations. The court resentenced Cosme to 2 years, 11 months at Level V, suspended after 1 year, 5 months for 1 year at Level III. This sentence reflected 7 months of credit for time served.

4) Cosme's only argument on appeal is that the trial court abused its discretion in giving such a severe sentence for his second VOP. It is settled that this Court will not review a sentence that is within the statutory limits except in limited circumstances:

[T]his Court [has] appellate jurisdiction to review sentences on the basis of alleged: unconstitutionality; factual predicates which are either false, impermissible, or lack minimum indicia of reliability; judicial vindictiveness, bias, or sentencing with a "closed mind;" and any other illegality.¹

¹ *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

5) Cosme contends that, because the court gave him the maximum permissible sentence, the court must have had a closed mind. In addition, Cosme says that the court impermissibly relied on the Probation Office's finding that Cosme could not complete Level IV. The record belies both claims.

6) As Cosme admitted at the VOP hearing, he has a record of 43 arrests, 6 felony convictions, 22 misdemeanor convictions, and two VOPs. The VOP was based on 8 program violations in about 3 months. Given Cosme's extensive criminal record, and the fact that this was his second VOP, the court's imposition of the maximum sentence was entirely appropriate and in no way suggests that the court acted with a closed mind.

7) For the same reasons, the court's conclusion that Cosme should not continue at Level IV was properly grounded on reliable facts. Cosme had been housed at several Level IV facilities and he repeatedly failed to adhere to their rules. The trial court did not need more evidence than that to conclude that Cosme should be given a Level V sentence.

NOW, THEREFORE, IT IS ORDERED, that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice